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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/798,932	03/11/2004	Scott Arthur William Muirhead	407500003COA	6932

31295 7590 07/23/2007

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EXAMINER
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CHEN, JOSE V

ART UNIT	PAPER NUMBER
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3637

MAIL DATE	DELIVERY MODE
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07/23/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/798,932

Applicant(s)

MUIRHEAD, SCOTT ARTHUR  
WILLIAM

Examiner

José V. Chen

Art Unit

3637

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 25 June 2007.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 11-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 11-18 is/are allowed.
- 6) ☒ Claim(s) 19-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

The Declaration under 37 CFR 1.132 filed 06-25-07 is insufficient to overcome the rejection of claims 19-27 based upon Apps et al ('677), Gronnevik as set forth in the last Office action because : 1) secondary considerations are made with respect to obviousness. Secondary considerations are not relevant to anticipation under 35 USC 102. Further, there is no nexus between the merits of the **claimed** invention and the evidence of the secondary considerations; 2) there is no factual evidence of the stated opinions, such as testing results.

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 19 is rejected under 35 U.S.C. 102(b) as being anticipated by Apps et al (6,006,677). The patent to Apps et al teaches structure as claimed including a pallet assembly, a fire resistant layer formed upon an exterior of the pallet assembly. It is noted here that plastics including thermoplastic material provide a fire resistant layer and therefore, the thermoplastic pallet structure of Apps et al teaches structure as claimed.

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Claim 19 is rejected under 35 U.S.C. 102(b) as being anticipated by Gronnevik. The patent to Gronnevik teaches structure as claimed including a thermoplastic pallet, a fire resistant layer as stated as above.

It is repeated, the first two paragraphs of the article submitted (ids filed 06-19-06 entitled "Fire and Polyvinyl Chloride" ,1996), it is stated that "Polyvinyl chloride (PVC, or vinyl) materials or product tend to have excellent fire performance properties..." Further, in the article to McGrath, cited by the examiner, thermoplastic materials are considered to have a certain fire resistance. Claim 19 states A...a fire resistant layer formed upon an exterior of said pallet assembly." Both Gronnevik and Apps (both including thermoplastics) teach such as stated in the rejection.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

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4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gronnevik. The patent to Gronnevik teaches structure substantially as claimed, as discussed above, including a pallet shell half (3), second pallet shell half (4) fused together, a support structure. The placement of a support member or the dimension of a shell are matters of desirability which would have been obvious and well within the level of ordinary skill in the art, thereby providing structure as claimed.

Claims 20, 21, 23, 24, 25, 26, 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gronnevik in view of Ford et al. The patent to Gronnevik teaches structure substantially as claimed including a fire resistant pallet, the only difference being that the pallet does not include a mixture of intumescent material. However, the patent to Ford et al teaches the use of providing intumescent compositions of plastic to provide a protective layer for a structure. It would have been obvious at the time of the invention to modify the structure of Gronnevik to include a mixture of intumescent plastic material to provide a protective layer for a structure, as taught by Ford et al since such structures are used for the same intended purpose, thereby providing structure as claimed. The percentages or ratios of mixture is a matter experimentation which would have been obvious and well within the level of ordinary skill in the art, thereby providing structure as claimed. It is noted that the method to which a utility structure is formed carries no weight in a utility claim.

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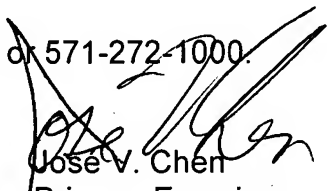
***Response to Arguments***

Applicant's arguments filed 12/04/06 have been fully considered but they are not persuasive. See statements above.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to José V. Chen whose telephone number is (571)272-6865. The examiner can normally be reached on m-f,m-th 5:30am-3:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571)272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
José V. Chen  
Primary Examiner  
Art Unit 3637

Chen/jvc  
07-17-07